IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Bail Appl..No. 5986 of 2007()

LPC.90/2000 of J.M.F.C.,KASARAGOD

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: PETITIONER/1ST ACCUSED

BADRU, S/O.MOIDEEN KUNHI,
NEAR KUNJATHUR JUMA MASJID QUARTERS,
KUNJATHUR, KASARAGOD TALUK.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT AND STATE

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1. S.I. OF POLICE, MANJESWAR.

2. STATE OF KERALA REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 5986 OF 2007

Dated this the 27th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. Investigation is complete. Final report has already been filed. Committal proceedings was registered as early as in 1999. The petitioner is the 1st accused. He has not appeared before the learned Magistrate in the committal proceedings so far. The petitioner was not available for arrest in the course of investigation also. Consequently, the case against the petitioner has been transferred to the list of Long Pending Cases and coercive processes have been issued against the petitioner.

2. According to the petitioner he is absolutely innocent. His absence was not wilful or deliberate. He is willing to surrender before the learned Magistrate and seek regular bail.

The petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The petitioner may be directed to appear before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the

learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

7. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge